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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 JOHN WOLFENBARGER
18 Defendant.
19

CASE NO. CR 16-519- LHK

**DEFENDANT'S PROPOSED VOIR
DIRE QUESTIONS**

Pretrial Conference: February 5, 2020
Trial Date: March 17, 2020

Honorable Lucy H. Koh

20
21 Defendant John Wolfenbarger, by and through counsel, respectfully requests that the
22 following questions be posed by the Court to the venire, either in a questionnaire or in open court:

- 23 1. Have you ever served on a jury? Was the case civil or criminal? Were you able to
24 reach a verdict?
25 2. What clubs or organizations do you belong to? Do you belong to any organizations
26 concerned with criminal law or the criminal justice system?
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28

1 3. Have you ever applied for a job or worked for a law enforcement agency or in the
2 military or security field? Have any of your close friends or relatives ever applied for a job or
3 worked for a law enforcement agency or in the military or security field?

4 4. Have you ever applied for a job or worked in the legal field? Do you have any legal
5 training? Have any of your close friends or relatives ever applied for a job or worked in the legal
6 field?

7 5. There may be one or more law enforcement officers or agents who will testify in
8 this case. Will the fact that a person is a law enforcement officer make you trust him or her more
9 than any other witness? Would you tend to give any greater weight or credibility, no matter how
10 slight, to the testimony of a law enforcement officer or government witness because they are
11 employees of, or are testifying on behalf of, the government?

12 6. There may be one or more experts who will testify in this case. Will the fact that a
13 person is an expert in their field make you trust him or her more than any other witness? Would
14 you tend to give any greater weight or credibility, no matter how slight, to the testimony of an
15 expert as compared to a lay witness?

16 7. Have you, a member of your family, or a friend been a victim of a crime? If so,
17 what effect if any would that fact have on your ability to be fair and impartial in deciding whether
18 Mr. Wolfenbarger is guilty or not guilty of the charges in this case?

19 8. Has anyone on the panel ever been sexually abused or assaulted? If yes, what was
20 the relationship of the person who abused you, how old were you, and was the abuse reported to
21 someone?

22 9. Has anyone close to any of you ever been sexually abused or assaulted? If yes, how
23 do you know this person who abused him/her, how old was s/he, and was the abuse reported to
24 someone?

25 10. Have you ever suspected that someone you know was being physically or sexually
26 abused?

11. Have you ever known anyone who was charged with physical or sexual abuse or was accused of abusing someone? If yes, please explain.

12. Have you ever had a job where you were required to report any signs of physical or sexual abuse of children or young people? If yes, did you ever have to report abuse?

13. Have you ever worked or volunteered at a governmental or private agency or service which deals with abused children? (Some examples are Child Protective Services, church groups, or child abuse hotline). If yes, please give details.

14. Mr. Wolfenbarger is charged with Attempted Production of Child Pornography, Attempted Coercion and Enticement of Minors, and Receipt of Child Pornography. Knowing this, do you have any doubt that you could be a fair and impartial juror?

15. During the course of this trial, you may see images of child pornography that you may find disturbing. Knowing this, do you have any doubt that you could be a fair and impartial juror?

16. Do you think that Mr. Wolfenbarger must have done something wrong or he would not be here today? Mr. Wolfenbarger is presumed to be innocent unless and until he is proven guilty beyond a reasonable doubt. Do you have any trouble giving him the benefit of this presumption of innocence without any mental reservations whatsoever?

17. Mr. Wolfenbarger has the right not to testify. What are your thoughts about whether or not a defendant should testify?

18. If after hearing all the evidence in this case, you thought that Mr. Wolfenbarger was probably guilty, but you were not convinced beyond a reasonable doubt, would you have trouble returning a verdict of not guilty?

19. Will you be concerned about later criticism should you return a verdict of not guilty?

20. I will instruct you what the law is at the conclusion of the case. If selected as a juror, you will take an oath to follow the law. Does anyone think you would have trouble following the law if you disagree with it?

21. This is a criminal case in which the government must prove guilt beyond a reasonable doubt. Does anyone have any difficulty in holding the government to its burden?

22. Here are some fundamental principles of law:

- a. The fact that an indictment has been filed raises no presumption whatsoever of the guilt of the defendant.
- b. The United States government must satisfy you beyond a reasonable doubt of the guilt of the defendant.
- c. The defendant does not have any obligation to testify or to produce any evidence and you may not draw an adverse inference if the defendant chooses not to testify.
- d. The defendant is presumed to be innocent until his guilt is established beyond a reasonable doubt.
- e. You must wait until all of the evidence has been presented before making up your minds as to the innocence or guilt of the defendant.
- f. Does anyone believe that they would have any difficulty following these principles of law?

23. Is there anything about the nature of the charge or your personal experience which you have not disclosed that makes you believe that you could not be fair and impartial in reaching a verdict in this case?

Dated: January 29, 2020

Respectfully submitted,

STEVEN G. KALAR
Federal Public Defender

/S/

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